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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/733,600	12/08/2000	Alan J. Dabbieri	5840/31969	6097

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Brian J. Anderson, Esq.  
Morris, Manning & Martin, LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, NE  
Atlanta, GA 30326-1044

EXAMINER

STERRETT, JONATHAN G

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/733,600

Applicant(s)

DABBIERE, ALAN J.

Examiner

Jonathan G. Sterrett

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

### A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Summary*

1. Claims 1-16 are pending in the application.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Omum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-11 and 14-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 6,226,622.

Regarding Claim 1, although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 in the instant application reads: "receiving a current position comprising longitude, latitude and altitude". The referenced patent, Claim 1 reads "receiving a current position of said object via a global positioning system (GPS) signal". It would be obvious to one of ordinary skill in the art at the time of the invention to receive a position signal comprising longitude, latitude and altitude because a GPS signal provides these.

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Regarding Claim 2, it is identical to Claim 6 in the referenced patent.

Regarding Claim 3, it is identical to Claim 8 in the referenced patent.

Regarding Claim 4, it is identical to Claim 9 in the referenced patent.

Regarding Claim 5, it is identical to Claim 10 in the referenced patent.

Regarding Claim 6, it is identical to Claim 11 in the referenced patent.

Regarding Claim 7, it is identical to Claim 7 in the referenced patent.

Regarding Claim 8, it is identical to Claim 2 in the referenced patent.

Regarding Claim 9, it is identical to Claim 3 in the referenced patent.

Regarding Claim 10, it is identical to Claim 4 in the referenced patent.

Regarding Claim 11, it is identical to Claim 5 in the referenced patent.

Regarding Claim 14, although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 14 in the instant application reads: "a positioning system receiver". The referenced patent, Claim 14 reads "a global positioning system (GPS) receiver". It would be obvious to one of ordinary skill in the art at the time of the invention to utilize a positioning system receiver because both a positioning system receiver and a global positioning system (GPS) receiver receive position data.

Regarding Claim 15, it is identical to Claim 15 in the referenced patent.

Regarding Claim 16, it is identical to Claim 16 in the referenced patent.

4. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re*

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*Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

5. Claim 12 rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of prior U.S. Patent No. 6,226,622. This is a double patenting rejection.

6. Claim 13 rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of prior U.S. Patent No. 6,226,622. This is a double patenting rejection

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 5,629,981 by Nerlikar discloses an information management and security system utilizing a user ID badge containing a positioning system transponder.

US Patent 5,428,546 by Shah discloses using GPS information mapped on raster and vector maps to improve productivity.

US Patent 5,557,553 by Sellie, Sr. discloses a computerized time study system to determine and improve productivity.

US Patent 6,604,005 by Dorst discloses a method for path planning.

US Patent 5,541,845 by Klein discloses monitoring of route and schedule adherence.

US Patent 5,014,206 by Scribner discloses a tracking system.

US Patent 4,688,026 by Scribner discloses a method of collecting and using data associated with tagged objects.

US Patent 5,586,030 by Kemner discloses a system for managing access to a resource in an autonomous vehicle system.

US Patent 5,610,815 by Gudat discloses an integrated vehicle positioning and navigation system.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan G. Sterrett whose telephone number is 703-305-0550. The examiner can normally be reached on 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on 703-305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGS

11-10-04

  
TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3623